



JAG Quarterly

501st Combat Support Wing



Second Quarter 2010

SJA CORNER

This summer brings with it some turnover in the 501 CSW legal community. First, I'd like to say goodbye to MSgt James Green, the legal office superintendant for 501 CSW/JA, who retired after 24 years of faithful service. Though he'll never be replaced, we anticipate his successor to arrive in October 2010. Further, I'd like to welcome Maj Byron Greene as the SJA at the Croughton legal office and say goodbye to Maj Jennifer Clay, who is transferring to Global Strike Command at Barksdale AFB. Capt Nick Meanza from the Menwith Hill legal office departed earlier this year for Shaw AFB, enroute to Afghanistan. We welcome Capt Robert Palmer as his successor. Also TSgt Nikkole Sheehan arrived at the 426 ABS legal office earlier this year after TSgt Michael Brazil departed for Beale AFB. A warm welcome to all.

This edition of the JAG Quarterly features the Blotter, which is a synopsis of some of the military justice actions in the 501 CSW and our partner units in the UK and Norway over the past quarter. Beyond that regular feature, the first substantive article provides useful information on the legal "ins-and-outs" of the new Fitness

Program. The second article addresses a UK program to compensate victims of crime. The final article is a brief overview of common ethics issues surrounding gift giving. As you read through the newsletter, please jot down any ideas you may have for future articles. Chances are that if you have questions, other people do too. Help us make the newsletter as useful as it can be and send your local legal office an e-mail with your suggestions.

-- Maj Matthew P. Stoffel, 501 CSW/JA
Staff Judge Advocate

LEGAL RESPONSIBILITIES UNDER THE AIR FORCE FITNESS PROGRAM

On 1 July 2010, after over a year of planning and speculation, the new Air Force Fitness Program went into effect. This article gives a brief overview of the Fitness Program AFI. As always, if you have any questions consult your Staff Judge Advocate.

Unit Commander Responsibilities

The first line of AFI 36-2905, *Fitness Program*, affirmatively states, "It is every Airman's responsibility to maintain the standards set forth in this AFI 365 days a year." That said, Unit/Squadron Commanders retain the responsibility for providing a work environment that supports healthy lifestyle choices and setting expectations for the Airmen in the Unit. Unit/Squadron Commanders are also required to take affirmative steps to ensure their Airmen are healthy and maintain their

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fitness. This includes having a written policy describing their fitness program. This policy must include a program that encourages members to participate in physical fitness training up to 90 minutes, 3-5 times per week. Unit/Squadron Commanders are encouraged to set aside time from the duty day so long as the mission allows. Also, Physical Training Leaders (PTLs) and Unit Fitness Program Managers (UFPMs) must be appointed in writing. Additionally, Unit/Squadron Commanders must administer personnel actions such as discharges and must ensure all members, including deployers, have current and passing fitness scores at all times.

Physical Fitness Education/Intervention & Documentation

Perhaps the hardest part of managing a Physical Fitness program is dealing with Airmen who fail the fitness assessment (FA). The AFI specifies that fitness education must be incorporated into the training programs for all members. Further, members who achieve an unsatisfactory score on an official FA are required to attend the Healthy Living Program (HLP) within 10 days of failing. The HLP focuses on educating Airmen on how to change their nutritional and exercise behavior in order to improve their health. Please note, because 501 CSW installations are GSUs, members may attend the HLP online.

In addition to HLP classes, when an Airman receives an unsatisfactory score, the Unit/Squadron Commander is encouraged to provide duty time, approximately 90 minutes 3-5 times per week for fitness training. Moreover, the Airman must be encouraged to exercise 5 times per week. Unit/Squadron Commanders or UFPMs must record all education and intervention programs on an AF Form 108 complete with signatures and notations. Documentation at this stage is crucial if the Commander is considering adverse action such as a discharge.

Continued Unsatisfactory Scores

Members are expected to meet fitness standards at all times. Failure to meet standards subjects the member to adverse action. Attachment 19 of the AFI includes a chart setting forth all the administrative and personnel actions available to Unit/Squadron Commanders. The most serious of these actions is to recommend the Airman be administratively discharged. Initially, a recommendation for discharge is not automatic, but may be made to the Installation Commander when:

- 1) The member has received an Unsatisfactory FA score following a conditioning period of at least 42 days after a previous Unsatisfactory FA score;
- 2) The Unit/Squadron Commander finds the member failed to demonstrate significant improvement despite the conditioning period; and
- 3) An evaluation by military health care provider has ruled out medical conditions contributing to the Unsatisfactory FA.

However, a recommendation for discharge or retention must be made when an individual remains in the unsatisfactory fitness category for a continuous 12 – month period or receives four unsatisfactory scores in a 24-month period. When a Unit/Squadron commander decides to take no action or recommends retention, it must be documented in a formal memorandum.

In conclusion, Airmen and Commanders must realize and comply with their responsibilities under the AFI. Regarding FA failures, documentation that the unit followed the proper procedures is paramount. And remember, always consult the Staff Judge Advocate before taking any action.

-- Capt Adam Olsen, 501 CSW/JA
Assistant Staff Judge Advocate

COMPENSATION FOR CRIME VICTIMS

It is a sad indictment that these days in the United Kingdom many people are victims of crime. With late night opening of Public Houses and Night Clubs, many of these incidents are alcohol fueled. Usually, fights take place for minor reasons, but they can put an innocent person in a hospital.

The US Military has a large number of personnel stationed in the UK, and it is possible that some can quite innocently become a victim of an assault or other crime during their time here. If you are the victim of a crime in the UK, you may claim compensation via a UK Government-based organization known as The Criminal Injuries Compensation Authority (CICA).

CICA is responsible for administering the Criminal Injuries Compensation Scheme in England, Wales and Scotland. It provides a free service to victims of violent crime with ability to award compensation up to £500,000.

The following is an example of the program in action pertaining to a dependent son of a DoD civilian employee. In July 2009, the victim was at a night club in Oxfordshire dancing when he was attacked for no apparent reason. His attacker punched him in the face, which resulted in him losing a front tooth. Local Police were called, and the assailant was arrested. The victim was taken by ambulance to a local hospital and received emergency dental treatment. It was obvious that he would need several months of painful treatment to repair the damage.

In the meantime, his assailant was released on police bail and subsequently given an 'Official Caution' for the offence of 'causing grievous bodily harm,' which if found guilty of in Court normally results in a custodial sentence.

The victim did not have dental insurance and upon his return to the United States had to pay for expensive dental treatment out of his own personal funds. Having lost one tooth in the assault, he lost a further two teeth in surgery to repair the damage. The total cost of this treatment was just over \$6,000.

Prior to the victim leaving the UK, he liaised with the Base Legal Office and decided to make a claim for compensation via the CICA. CICA corresponded with the Base Legal Office on numerous occasions and obtained details of the treatment the victim received in the United States.

Just recently the CICA assessed compensation at £4,400, which covers the victim's costs under current exchange rates. Incidentally the maximum payout for the loss of three teeth is £4,400.

CICA has a very informative web page at www.cica.gov.uk. Clients can apply online when seeking compensation. If you have any questions or need further information about this program, please contact your servicing legal office.

-- Paul Kyberd, 422 ABG/JA
British Liaison Officer

GIVING & ACCEPTING GIFTS: AVOIDING EMBARRASSMENT

One thing that comes with PCS season is gift giving, but giving and accepting gifts is something that occurs year-round. Commanders should be aware of the

regulations and enforce them within their commands. The conscientious application of these rules will help everyone to remain within legal boundaries and avoid awkward moments where inappropriate gifts are presented in a public setting. Gifts at going away ceremonies are a military tradition and are certainly not prohibited, but the focus should be on thanking our outgoing members for their service and perhaps providing a memento rather than fretting about extravagant gifts.

The following general guidance is provided concerning gift giving and acceptance. These build on the overarching rules that no one should use their official position to solicit or coerce the offering of a gift, or accept a gift in exchange for being influenced in the performance of an official action. Further, always be cognizant of appearances. Even if a gift would technically fall within these guidelines, it should not be given or accepted if it would create the appearance of impropriety.

Gifts from Subordinates. Normally, it is inappropriate for subordinates to give gifts to their superiors, and it is improper for superiors to accept those gifts. However, there are exceptions to this rule, such as gifts appropriate to the occasion that end a superior-subordinate relationship. In these cases, there is a \$300 limit on any gifts per donating group, there is a \$10 limit on soliciting donations for the gift amongst subordinates, contributions must be truly voluntary, and no pressure should be put on anyone to contribute toward a gift. Different groups cannot split one gift into two parts to get in under the \$300 limit, and the previous "Perry Exception" that expanded the \$300 cap in limited circumstances is no longer permitted.

Gifts from Prohibited Sources. Gifts should usually not be accepted if offered from a "prohibited source." A prohibited source is any individual or organization seeking government action, doing business or seeking to do business with the government, conducting activities regulated by the government, or who has interests substantially affected by the government. These situations happen most frequently with contractors and other organizations that do business with the US military. While most gifts cannot be accepted from these contractors, government officials are permitted to accept a certificate or plaque that has little intrinsic value. Further, there is one exception that allows the acceptance of a gift that is under \$20 from a prohibited

source as long as not more than \$50 is accepted from that source per year.

Gifts from Foreign Governments. As we are stationed overseas and interact routinely with our local mayors and town councils, it is likely that commanders or others may receive gifts from those groups. In such cases, only gifts of minimal value may be accepted (minimal value is defined as any gift with a US retail value below \$335 at the time of acceptance). The value of multiple gifts from the same source given at the same time must be aggregated and fall below the \$335 threshold (any gifts to spouses must be added to the total as well). Any gifts above minimal value must be returned to the donor, purchased by the recipient at fair market value, or in some cases it may be accepted for use within the government.

Practical advice. These rules can be tricky and are very fact specific. Here are some good rules to follow: 1) if your organization is giving a gift, try to avoid even getting close to the \$300 limit; 2) have the most junior person in your organization solicit donations for a gift amongst your members; 3) only mention the maximum \$10 when seeking donations (people can give more than \$10 if they choose to, but only \$10 can be solicited); 4) do not keep a record of who has donated or even think of pressuring individuals to donate or cough up more money if a shortfall occurs. These are general rules and you should seek legal advice if you have any questions. There are numerous legal opinions on these issues covering a myriad of fact scenarios. I can assure you that if you think you have found a loophole, you are probably wrong and are setting yourself up for failure. You'd be wise to "run it by legal."

-- Capt Matthew Dunham, 501 CSW/JA
Deputy Staff Judge Advocate

The Blotter

Punishments under Article 15, UCMJ

- An E-3 was reduced to E-2 pursuant to a Vacation Action after he failed to perform extra duties in accordance with a prior Article 15 punishment, in violation of Article 92, UCMJ.
- An E-3 was punished for shoplifting merchandise from the RAF Lakenheath Base Exchange in violation of Article 120, UCMJ. She received a reduction to E-2 (suspended), Forfeiture of \$280 pay for one month, and restriction to base for 25 days.
- An E-2 was punished for misusing his GTC to purchase several personal items while TDY and upgrading his compact rental car to a high performance sports car, in violation of Article 92, UCMJ. He received a Reprimand.

Courts-Martial

- An E-6 pled guilty to wrongful and knowing possession of child pornography. He was sentenced to 42 months confinement, reduction to E-2 and a Dishonorable Discharge.